

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

David Walcott :
 :
v. : Civil No. 3:04cv1529 (JBA)
 :
Department of Homeland Security :
and Bureau of Immigration and :
Customs Enforcement :

Ruling and Order [Docs. ## 2, 17]

Petitioner David Walcott, a citizen of Jamaica, currently is in state custody, incarcerated at the Enfield Correctional Institution, having been convicted of a state narcotics violation. He also is subject to an immigration detainer lodged by the Bureau of Immigration and Customs Enforcement ("BICE") that is in "investigation status." See Petitioner's Response [Doc. # 13] Ex. 1. Proceeding pro se, Walcott filed a petition for a writ of habeas corpus, naming as respondents the Department of Homeland Security and BICE and seeking "an order directing the respondents to issue a 'final administrative removal order.'" Petition [Doc. # 2] at 8.

By order filed August 18, 2005, the Court gave notice of its intent to dismiss the petition on its own motion for lack of subject matter jurisdiction because petitioner is not in federal custody. See Endorsement Order [Doc. # 8]. Petitioner responded pro se to the notice, see [Doc. #13], and recently obtained counsel, who filed a motion to amend the petition to seek a writ

of mandamus [Doc. # 17]. For the reasons that follow, the Court finds it lacks subject matter jurisdiction over this case.

As set forth in the previous order as well as the Government's Response to Order to Show Cause, see [Doc. #6], the federal court lacks subject matter jurisdiction over a petition for habeas corpus unless the petitioner is in the custody of a federal agency empowered to grant the relief that the petitioner seeks. Petitioner's response of September 14, 2005, shows that he currently is in the custody of the Connecticut Department of Corrections. His release date is 2010 and his parole eligibility date is September 19, 2006.

Petitioner claims that a final order of removal is needed in order for him to obtain a parole hearing,¹ and thus he seeks to compel BICE to hold a removal hearing. While Title 8 U.S.C. § 1228 requires "the Attorney General [to] provide for the initiation and, to the extent possible, the completion of removal proceedings . . . before the alien's release from incarceration for the underlying aggravated felony," there is no requirement that removal proceedings be completed before petitioner's parole

¹Under Conn. Gen. Stat. § 54-125a, the "Board of Pardons and Paroles shall hold a hearing to determine the suitability for parole release . . . upon completion . . . of seventy-five per cent of [an inmate's] definite or aggregate sentence." (emphasis supplied). Neither the statute nor the implementing regulations conditions the right to a parole hearing on a final order of removal. See Conn. Bd. of Pardons and Paroles: Parole Eligibility, available at <http://www.ct.gov/doc/cwp/view.asp?a=1520&q=270074> (last visited 2/8/06).

hearing or parole eligibility date. The Attorney General is only required to take into its custody any alien "who ... is deportable ... when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation...." 8 U.S.C. § 1226(c)(1).

This case is distinguishable from Torres v. INS, No. 3:03cv177 (JBA), 2003 WL 21785557 (D. Conn. July 30, 2003), in which the petitioner had been voted to parole 18 months prior but neither released nor deported, even though he was subject to a final order of removal. In that case, there was a serious question as to whether petitioner's continued detention was in state or federal custody. Here, it is clear that Walcott is in state custody and not eligible for parole until September 2006, and therefore his claim is unripe for review.

Petitioner's motion to amend to re-style his claim as a petition for mandamus will not change the legal analysis. In either case, his claim will not ripen until he is granted parole, even if he is only paroled to his immigration detainer. Until then Walcott is clearly in state custody.

Because Walcott is not currently in federal custody and his claim is unripe, this Court lacks jurisdiction over this case and the petition for habeas corpus [Doc. # 2] is **DENIED**. The motion to amend [Doc. # 17] is **DENIED** as futile, and this case will be closed.

IT IS SO ORDERED.

/s/ _____
JANET BOND ARTERTON, U.S.D.J.

Dated at New Haven, Connecticut, February 21, 2006.